

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

x-----x

MOHAMED BARY, )  
Plaintiff. )

-against- )

DELTA AIRLINES, INC. )  
Defendant. )

x-----x

STATE OF NEW YORK )  
 ) SS.:  
COUNTY OF NEW YORK )

Docket No. CV-02-5202

AFFIDAVIT OF SANJAY  
CHAUBEY, ESQ. IN OPPOSITION  
TO DEFENDANT'S  
MOTION FOR SUMMARY  
JUDGMENT

(Trager, J)

Sanjay Chaubey, Esq., being duly sworn, deposes and says:

1. I am the attorney for plaintiff, Mohamed Bary and member of the firm Law Offices of Sanjay Chaubey and I am fully familiar with the facts and circumstances hereinafter set forth. I submit this affidavit in opposition to defendant's motion for an order, pursuant to Fed. R. Civ. P. 56, granting summary judgment and dismissing plaintiff's complaint.
2. This affidavit is submitted based upon personal knowledge of the pleadings and disclosures to date in this matter. The following exhibits are annexed to this affidavit.
  - a. Exhibit A – Memorandum and Order in *Arshad Chowdhury vs. Northwest Airlines, Corp.*, Docket No. C02-02665.
3. Exhibit A is referenced in Plaintiff's Memorandum of Law submitted herewith. The arguments submitted in support of this motion are contained therein. It is respectfully submitted that the annexed Exhibit together with the Memorandum of Law establish that defendant's motion for summary judgment should be denied in all respects.

Dated: New York, New York  
October 10, 2008

LAW OFFICES OF SANJAY CHAUBEY

By: /s/ Sanjay Chaubey, Esq.  
SANJAY CHAUBEY, ESQ. (SC-3241)

*Attorneys for Plaintiff*  
*Mohamed Bary*  
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**MEMORANDUM - PAGE 4**

- 589 She describes the plastic container as approximately a foot and a half high. It had a label on it. She did not read the label that day. She had read it five or six years before.
- 590 She understood what she read on the label when she read it. She is not sure whether the same label was on the container on the day of the accident as she had read several years before.
- 596 She emptied the entire contents of the container on the Mens Room floor.
- 608 The witness testifies that seeing the container at the deposition is the first time she had seen it since the accident.
- 610 The witness identifies the label on the container as one that she had read six years before the accident.
- 620 When she saw fire on the floor, she tried to get out of the bathroom, but she slipped.
- 621 She fell approximately three times and got up each time. She eventually got out of the bathroom.
- 622 The witness identifies defendants' Exhibit "O" as a fair and accurate representation of the bathroom on the day of the accident.
- 629 The plaintiff believes she probably called for help while she was in the bathroom, but she does not remember. She did not attempt to put out the fire.
- 629 She does not remember ever telling anyone that she was burned while painting. She never did any painting at the factory.
- 630 She had been to Milo's apartment in the factory before the accident.
- 631 She does not recall shouting out to Milo. She did not call 911.
- 631 When she got to Milo's apartment, she went directly to the bathroom. She got under the water in the shower with her clothes on.
- 633 She does not know if she had a cell phone with her at the time of the accident.

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- 634           The witness is asked whether Milo came to the apartment while she was in it. She answers that she knows she was saying I'm fine to someone. She does not know if it was Milo.
- 635           She believes her husband helped her from the shower, or from the apartment. The next thing she remembers after being in the shower is her husband taking her to the hospital.
- 639           The witness testifies that the photographs marked as defendants' Exhibit "E" contains two louvered doors that were not present on the day of the accident. She testifies that there was a wall where those doors are.
- 642           The witness testifies that she was present when the photograph was taken, approximately four months after the accident. She was there with her husband, an attorney, and a photographer.
- 652           She does not recall what she was wearing when her husband took her to the hospital. She does not remember if he removed her clothing, or whether she was still wearing it.
- 653           The witness identifies the word flammable in the label that she read. She testifies that flammable means to her that it can get on fire. She never saw anyone at Twin Girls or JJ&J use the cleaning fluid to clean anything but a sweater or clothing material.

R.A.F.

RAF:cmh